

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Habeas

After an evidentiary hearing, Judge Redden granted a petitioner's motion to vacate or correct sentence on his claim of ineffective assistance of counsel. In 1988, police found 21 kilograms of cocaine in the car that petitioner was driving. Based on the amount of drug, he faced a mandatory minimum sentence of 10 years. He also had an earlier state felony drug conviction, which exposed him by sentencing enhancement to a mandatory minimum sentence of 20 years. The AUSA extended an oral plea offer to petitioner's lawyer indicating that he would not seek a sentencing enhancement if petitioner pled guilty. The offer was not accepted and the AUSA filed the sentencing enhancement. Petitioner was found guilty after a jury trial and sentenced to a mandatory minimum of 20 years.

Judge Redden found that petitioner's attorney did not adequately inform him of the AUSA's plea offer and the ramifications of rejecting the offer. Petitioner steadfastly maintained

his innocence because he did not "know" there were drugs in the car. He admitted that he "suspected" there were drugs in the car because of surrounding circumstances (including that he was paid \$500 to drive the car). Petitioner believed that he could not be convicted because the government could not prove actual knowledge. Judge Redden found that petitioner's attorney did not advise him that the government had sufficient evidence to prove legal knowledge of the drugs, or to satisfy the "willful blindness" test of United States v. Jewell, 532 F.2d 697 (9th Cir. 1976), and did not provide petitioner with an understandable explanation of the risks and consequences of trying his case as opposed to accepting the plea offer. Judge Redden vacated the sentence and reinstated the plea offer for purposes of resentencing. Delegario Lemos Mendoza v. United States, CV 97-06103-BU (Opinion, May 1, 2000).
Petitioner's counsel: Linda Ramirez;
Leslie Kay
Respondent's counsel: Christopher Cardani

Procedure

A group of Oregon plaintiffs filed an action against defendants from Florida and Illinois asserting various state and federal claims arising out of significant losses to plaintiffs' brokerage accounts. Defendants sought to transfer venue to the Northern District of Illinois based largely upon an Illinois forum selection clause and convenience to sources of proof located in Chicago. Plaintiffs challenged the validity of the forum selection clause and argued that transfer would work a hardship, particularly given their advanced age and infirmity.

Judge Dennis James Hubel held that the forum selection was valid. He further reasoned that because the case was premised upon federal question jurisdiction, the venue issue would be governed by 28 U.S.C. § 1404(a). Thus, rather than presuming venue in the forum selected, the forum selection clause would be a factor the effectively neutralized the favor usually accorded plaintiffs' choice of forum.

2 The Courthouse News

Applying these principles, Judge Hubel noted that although the majority of documents were located in Illinois, the litigation bore little connection to that forum and Oregon law would apply to plaintiff's state common and statutory law claims. The court further found that a venue transfer would be inappropriate given the significantly greater congestion in the Northern District of Illinois court which was a critical factor in this case given the plaintiffs' advanced ages and health. Accordingly, the court denied the motion to transfer. Knudsen v. Elite Trading Co., CV 99-1497-HU (Findings and Recommendation, March 17, 2000; Adopted by Order of Judge Malcolm F. Marsh, April 24, 2000),

Plaintiffs' Counsel:

Keith Ketterling

Defense Counsel:

Robert Rosenthal (local)

Evidence/ Civil Rights

The wife of man who was shot and killed by police officers filed an action for damages under 42 U.S.C. § 1983 and Oregon common law. Plaintiff claims that three police officers were unreasonable in using deadly force against her husband during a

domestic dispute call because he husband was unarmed at the time. The police officers claimed that the husband was drunk and fully armed and that the shooting was justified to protect themselves from serious deadly harm.

In responding to a defense motion for summary judgment, plaintiff submitted several different affidavits and a videotape purporting to demonstrate the events on the evening in question. Judge Janice M. Stewart granted the defendants' motion to strike two of the affidavits based upon a finding that they constituted "sham" contradictions to earlier sworn statements. The court refused to strike an affidavit that contradicted a prior unsworn statement, noting that the prior inconsistent statement could be used as impeachment.

Judge Stewart held that the same "sham" affidavit rule should apply with equal force to the proffered videotape. She then concluded that because the videotape portrayed a scene in which several key elements contradicted of the plaintiff's prior, sworn statements, it would be stricken.

The court denied defendants' motion for summary judgment and qualified immunity, finding that although serious questions regarding plaintiff's credibility could lead a jury to conclude that her

assertions were implausible, genuine issues of material fact regarding whether the husband was armed when the police fired precluded summary judgment. Kibbee v. City of Portland, CV 98-675-ST (Opinion, March 16, 2000 - 28 pages). [*Postscript: Following a 4-day trial, the jury returned a verdict finding in favor of all defendants on all claims on 4/28/00.]

Plaintiff's Counsel:

Cedric Brown

Defense Counsel:

J Scott Moede

Social Security

Judge Robert E. Jones affirmed an ALJ's direct application of disability grids to deny disability benefits. The court noted that SSA guidelines do not preclude the use of the grids whenever a claimant alleges non-exertional limitations. The court found that evidence in the record supported the ALJ's determination that the claimant suffered no significant non-exertional limitations that would significantly limit the range of work permitted by his exertional limits. King v. Social Security Administration, CV 99-971-JO (Opinion, May, 2000).
Plaintiff's Counsel:

David Lowry

Defense Counsel:

William Yougman (Local)